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No. 03-1574

In The
Supreme Court of the United States

BOBBY JOE WINCE, in his individual capacity; JOHN DOLAN, in his individual capacity; and THOMAS DUSING, in his individual capacity,

Petitioners,

v.

SUSAN STEMLER, WILLIAM CHIPMAN, Administrator of the Estate of CONNI BLACK, and RANDY BLACK, Legal Guardian of Shianne Black,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

REPLY TO BRIEF IN OPPOSITION

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I. RESPONDENTS GIVE SHORT SHRIFT TO THE CONFUSION SPAWNED BY INCONSISTENT APPLICATIONS OF THE *ROOKER-FELDMAN* DOCTRINE AS A REASON FOR GRANTING THIS PETITION

In support of their Petition for Writ of Certiorari, Petitioners cited the confusion spawned by the federal courts' inconsistent applications of the *Rooker-Feldman* doctrine as a compelling reason for granting this Petition.[1] In that vein, Petitioners cited and analyzed numerous cases from the lower federal appellate and district courts, including some from each of the Second, Third, Seventh, Eighth, Ninth and Tenth Circuits, and multiple law review articles. Each of these authorities specifically acknowledge the confusion and inconsistency that has resulted from attempts by various forums to apply the *Rooker-Feldman* doctrine. Respondents dismiss all of these authorities, insisting that "the lower courts consistently apply the same standard" and that inconsistent results are due to the varying fact patterns to which the doctrine is applied. (Respondents' Brief, pp. 13-14) Respondents' shallow argument must fail in light of the difficulty which lower courts have repeatedly acknowledged having – and which scholars and lawyers have repeatedly observed – in defining the relationship between *Rooker-Feldman* and other preclusionary and abstention doctrines, identifying the purpose and role of *Rooker-Feldman*, and applying the doctrine's nebulous "inextricably intertwined" test.

Notwithstanding Respondents' contentions otherwise, this case is the ideal vehicle with which to clarify those confusing issues. This case provides an opportunity for this Court to clarify the relationship between *Rooker-Feldman* and *res judicata*, since both doctrines are squarely presented by this case. In addition, this case provides an opportunity for this Court to provide much-needed guidance on the meaning of "inextricably intertwined",

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[1] The *Rooker-Feldman* doctrine is derived from two United States Supreme Court opinions, *Rooker v. Fidelty Trust Co.*, 263 U.S. 413 (1923), and *District of Columbia Ct. of App. v. Feldman*, 460 U.S. 462 (1983).

given the overlap between Chipman's Fourteenth Amendment claim and his state law claim.

In addition, the context of this case makes it an appropriate vehicle with which to resolve these troubling issues presented by *Rooker-Feldman* and *res judicata*. Police officers and citizens are involved in encounters every day and many of those encounters result in federal §1983 actions, meritorious or not, against police officers. Of course, fact patterns which lead to §1983 actions generally also lead to state law claims. As such, the extent to which federal claims and state law claims which arise from the same police-citizen encounter are "inextricably intertwined" will be presented time and again until the issue is squarely addressed by this Court.

Finally, as a practical matter, the risk of diametrically-opposed outcomes should this Court decline to grant this Petition, is substantial and highly prejudicial to Petitioners. On one hand, the Kentucky Supreme Court has determined that Petitioners cannot be found negligent in connection with the injuries Black sustained. On the other hand, if the Sixth Circuit's opinion stands, Petitioners may potentially be found liable under §1983, a cause of action which requires a showing of intentional misconduct. The possibility that the same decision on the part of Petitioners can at once be held insufficient to support a finding of negligence, but sufficient to support a finding of intentional misconduct is akin to finding that the same evidence is insufficient to support a finding of civil liability, but is sufficient to support a finding of guilt beyond a reasonable doubt.

The effect of the Sixth Circuit's decision in this case is to fail to give "full faith and credit" to the prior decision of the Kentucky Supreme Court. The basic concepts of federalism are impacted by that failure.

For those reasons, Petitioners respectfully petition this Court to grant a writ of certiorari in this case in order to entertain the problematic issues involving the *Rooker-Feldman* doctrine.

II. ALL OF RESPONDENTS' ARGUMENTS ARE FOUNDED UPON THE IMPOSSIBLE PREMISE THAT CHIPMAN'S FEDERAL AND STATE CLAIMS ARISE FROM TWO SEPARATE FACTUAL SCENARIOS

All of Respondents' arguments in opposition to this Petition for Writ of Certiorari depend on the premise that Chipman's federal and state law claims arise from two separate factual scenarios. Specifically, Respondents assert in each of their arguments that Chipman's federal claims arise from the "police stop" scenario, whereas his state claims arise from the "traffic accident" scenario. (Brief in Opposition, pp. i, 11, 14-15, 19, 20-21, 27, 29) This premise is faulty.

In federal court, Chipman alleged liability against Petitioners under the Fourteenth Amendment for failing to protect Conni Black from the injuries she sustained in the fatal traffic accident she was involved in after she left the scene of a traffic stop with an intoxicated driver. The factual underpinning of their allegation is Petitioners' failure to prevent Black from leaving the scene of the traffic stop with an intoxicated driver. Of course, the dispositive issue in resolving Chipman's Fourteenth Amendment claim is whether or not Black was in police custody at the time of the traffic stop; otherwise, Petitioners had no duty to act for her protection. *DeShaney v. Winnebago Co. Dept. of Social Services*, 489 U.S. 189 (1989).

Similarly, in state court, Chipman alleged liability against Petitioners for negligence under Kentucky law, based on the theory that Petitioners, as police officers, failed to adequately discharge their duty to protect Black from the harm which befell her in the fatal traffic accident she was involved in after she left the scene of the traffic stop with an intoxicated driver. The factual underpinning of their allegation is Petitioners' failure to prevent Black from leaving the scene of the traffic stop with the intoxicated driver. Under Kentucky law, a police officer has no affirmative duty to protect a citizen from injuries perpetrated by a third person in the absence of a "special relationship" between the police officer and the citizen. A "special relationship" exists if the citizen is "in state custody or otherwise restrained by the state at the time in question." *Ashby v. City of Louisville*, 841

S.W.2d 184 (Ky. App. 1992); *Fryman v. Harrison*, 896 S.W.2d 908 (Ky. 1995). Thus, the dispositive issue in resolving Chipman's state law claim was whether or not Black was in police custody at the time of the traffic stop; otherwise, Petitioners had no duty to act for her protection.

Accordingly, Chipman's state law claim hinged on the police stop. Indeed, but for the traffic stop, there could be no argument that a "custodial relationship" existed and consequently, no argument that a duty to protect arose under state law. As such, it is simply impossible to separate the "police stop" from the "traffic accident" and to view Chipman's claims as having arisen from two separate factual scenarios.

III. GIVEN THE LEGAL QUESTIONS INVOLVED IN THE FEDERAL AND STATE LAW CLAIMS, RESPONDENTS' ARGUMENT THAT THE *ROOKER-FELDMAN* DOCTRINE DOES NOT APPLY IS SPECIOUS

As demonstrated herein, the issue that is dispositive of Chipman's federal claim and state law claim are one and the same. Specifically, Chipman's §1983 claim – forged under a Fourteenth Amendment "duty to protect" theory – requires resolution of the issue whether Black was in custody at the traffic stop. *DeShaney*, *supra*. Likewise, Chipman's claim under Kentucky law – forged under a theory that there was a "special relationship" between Black and Petitioners, resulting in a duty to protect her – required resolution of the issue whether Black was in custody at the traffic stop.[2] Thus, Chipman's federal and state law claims are inextricably intertwined for purposes of the *Rooker-Feldman* doctrine.

In resolving Chipman's state law negligence claim, the Kentucky Supreme Court ruled as a matter of law that Black was not in custody during the traffic stop or at any other time:

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[2] Under Kentucky law, a "special relationship" arises when a citizen is in state custody or otherwise restrained by the state. *Ashby*, *supra*; *Fryman*, *supra*.

> [Black] was not in custody or otherwise restrained as a result of the conduct of the officers . . . The mere fact that the police told Black to remain in the Stemler automobile while the police were taking control of the investigation scene does not rise to the level of custody or "being otherwise restrained." A brief detention at a traffic stop does not create the relationship of custody . . . [citation omitted] . . . Our review of the lengthy record in this case causes us to conclude that the Court of Appeals was in error when it determined that Black was in custody and that the officers had a duty to protect her from third-party harm. The facts as considered by the circuit judge in granting summary judgment are that Black remained in the Stemler automobile during the traffic investigation stop and that she asked to leave the scene with Kritis. She also walked on her own to the Kritis truck despite being intoxicated. She was not physically placed in the vehicle by any of the police officers and she was not given a threat by any of the officers either to leave with Kritis or face arrest. **The consequence is that Black was never in custody or otherwise restrained so as to give rise to a special relationship between the police officers and Black.** There is no evidence in the record from which it can be concluded that Black was in custody by the police or any state actor at the time the pickup truck struck the guardrail.

City of Florence v. Chipman, 38 S.W.3d 387, 391-392 (Ky. 2001) (emphasis added). The Sixth Circuit's suggestion that this conclusion was mere dictum, a suggestion which it does not explain or support, takes a small part of the state court's opinion out of context and ignores the legal and factual realities of the case. The state court proceedings were directed at establishing whether or not Black was in custody *at the time of the traffic stop*. Indeed, since all parties acknowledged Petitioners were not present at the time of the traffic accident, the only relevant time considered by the state courts in resolving the custody question was the time of

the traffic stop, and the only factual basis for liability considered by the state court was Petitioners' failure to prevent Black from leaving the scene of the traffic stop with the intoxicated driver. Under these circumstances, the Kentucky Supreme Court's conclusion that Black was not in custody at the time of the traffic stop was essential to its decision, and cannot possibly be considered dictum.

Under the standard set forth in *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1 (1987), the Sixth Circuit should have abstained from considering Chipman's Fourteenth Amendment claim because that claim is inextricably intertwined with the state law claim that the Kentucky Supreme Court fully and finally adjudicated. Specifically, as demonstrated herein, in considering Chipman's state law negligence claim, the Kentucky Supreme Court decided that Black *was not* in custody at the time of the traffic stop. Therefore, Respondents' Fourteenth Amendment claim can succeed only to the extent that the Kentucky Supreme Court's decision was wrong, i.e., only if Black *was* in custody at the time of the traffic stop. Thus, from any vantage point, these two claims are inextricably intertwined and the Sixth Circuit should have deferred to the state court's decision.

IV. BECAUSE THE PREMISE OF RESPONDENTS' ARGUMENT FAILS WITH RESPECT TO THE INAPPLICABILITY OF THE TRANSACTIONAL APPROACH, CLAIM PRECLUSION CLEARLY APPLIES

Respondents argue that the transactional approach to claims preclusion does not apply because they have not split their causes of action. Their argument in this regard depends on the premise that their federal and state law claims arise from two separate factual scenarios, a premise shown herein to be without merit. Particularly telling in this regard is Respondent's assertion that the claims are different because the "thrust" of Chipman's federal action was to prove the existence of a "custodial relationship", while the "thrust" of his state action was to prove the existence of a "special relationship". (Respondents' Brief, p. 21) This is a distinction without a difference. Under Kentucky law, a "special relationship" exists

when a state actor places a citizen in custody or otherwise restrains him. *Ashby, supra*. Thus, the "thrust" of Chipman's federal and state law claims are identical, i.e., each depends on the existence of a custodial relationship. In pursuing one claim in federal court and the other in state court, Respondents sought two separate rulings on the same legal issue. Contrary to Respondents' contention, this is an egregious example of splitting one's causes of action.

There can be no question that both of Chipman's lawsuits arise from the same transactional nucleus of facts. Each can only be viewed as arising out of both the police stop and the subsequent accident. Indeed, Chipman's federal claim cannot succeed without the accident because, without the accident, there would be no "deprivation of life, liberty or property", a prerequisite for a claim under the Fourteenth Amendment. Conversely, Chipman's state claim cannot succeed without the police stop because, but for the police stop, there could be no argument that Petitioners owed Black a duty to act for her protection. Indeed, in recognition of the fact that these lawsuits arose from the same transactional nucleus of facts, the parties engaged in a single course of discovery, all of which was directed toward the issue whether Black was in custody during the police stop.

Since the lawsuits arise from the same transactional nucleus of facts, the Kentucky Supreme Court's judgment is deemed under Kentucky law to have adjudicated every matter which was or could have been brought under the same set of facts. *E.g., Yeoman v. Com., Health Policy Bd.*, 983 S.W.2d 459 (Ky. 1998); *Watts v. K,S&H*, 957 S.W.2d 233 (Ky. 1997). Since Chipman's Fourteenth Amendment claim could have been brought under the same set of facts, had the Sixth Circuit properly applied Kentucky law respecting claims preclusion, it would have afforded the Kentucky Supreme Court's judgment preclusive effect with respect to Chipman's Fourteenth Amendment claim.

V. THE SIXTH CIRCUIT OPINION IGNORES ALL MANNER OF PRECLUSION AND ABSTENTION DOCTRINES AND INVITES DUPLICITY OF LITIGATION WHICH IS WASTEFUL OF JUDICIAL RESOURCES

Respondents' arguments illustrate why this case cries out for this Court to intervene and severely limit or eliminate the practice by which Plaintiffs are allowed to pursue simultaneous, parallel claims in state and federal Court involving the exact same factual circumstances.

Respondents suggest that the law allows them to maintain parallel actions in federal and state courts to conclusion because "there is no blanket prohibition against simultaneous suits in federal and state courts". (Respondents' Brief, p. 18) That assertion defies all manner of preclusion and abstention doctrines, some of which are set forth in the very cases upon which Respondents rely for their preposterous assertion.

Of course, a litigant who pursues parallel actions generally is not able to litigate both to conclusion because a judgment or verdict in one forum will typically have preclusive effect, under the doctrine of *res judicata*, on the litigant's attempt to litigate the same issues in the second forum. *Lumen Constr., Inc. v. Brant Constr. Co., Inc.*, 780 F.2d 691 (CA7 1989); *Rojas-Hernandez v. Puerto Rico Elec. Power Auth.*, 925 F.2d 492 (CA1 1991); *Slaughter v. AT&T Info. Sys. Inc.*, 905 F.2d 92 (CA5 1980); *Gen. Reinsur. Corp. v. Ciba-Geigy Corp.*, 853 F.2d 78 (CA2 1988); *CIGNA Healthcare of St. Louis, Inc. v. Kaiser*, 294 F.3d 849 (CA7 2002). This reality is specifically recognized in the passage from *Wicker v. Bd. of Educ'n of Knott Co.*, 826 F.2d 442 (CA6 1987), cited on pages 17-18 of Respondents' Brief.

In addition, Respondents cite *Colorado River Water Conservation Dist. No. 7 v. U.S.*, 424 U.S. 800 (1976) for the proposition that "the pendency of an action in the state court is no bar to proceedings concerning the same matter in federal court." (Respondents' Brief, p. 17) While such a statement is found in *Colorado River*, that statement grossly misrepresents the significance of that case. In point of fact, the *Colorado River* Court recognized that it is not always

appropriate for a federal court to allow the same litigant to pursue parallel actions in federal and state courts where "considerations of wise judicial administration . . . conservation of judicial resources, and comprehensive disposition of litigation" are involved. *Id.* at 817. In that case, this Court dismissed a federal action filed by the United States against a water conservation district in deference to a parallel state court proceeding, citing as the primary reason for its decision the avoidance of piecemeal adjudication of water rights. *Id.* at 819. When a district court decides to dismiss or stay under *Colorado River*, it effectively concludes that the parallel state-court litigation will be an adequate vehicle for the complete and prompt resolution of the issues between the parties. *Moses H. Cone Memorial Hosp. v. Mercury Constr. Co.*, 460 U.S. 1 (1983). Thus, the decision to invoke *Colorado River* necessarily contemplates that the federal court will have nothing further to do in resolving any substantive part of the case, whether it stays or dismisses. *Id.*

In the context of §1983 litigation, lower federal courts have been especially inclined to abstain in deference to a parallel state court proceeding. *E.g., Ericksen v. Village of Willow Springs*, 876 F.Supp. 951 (N.D.Ill. 1995) ("the existence of concurrent jurisdiction over actions brought pursuant to §1983 weighs strongly in favor of abstention"); *Gonzalez v. Torres*, 915 F.Supp. 511 (D.P.R. 1996) (abstaining where Fourteenth Amendment claim can be entertained by state court and that forum is adequate to protect plaintiff's rights); *DeVona v. City of Providence*, 652 F.Supp. 683 (D.R.I. 1987) (dismissing §1983 action brought under Fourth and Fourteenth Amendments because overall result of parallel actions would be piecemeal adjudication and would result in waste of judicial resources).

In one such case, a federal district court decried the practice of maintaining parallel actions:

> . . . a claimant who files simultaneous complaints in both federal and state forums obviously does so in order to postpone as long as possible his decision as to where he can obtain the most advantageous forum in which to litigate his claim. That plaintiff wants to let a few chips fall before he places his bet . . . It is clearly necessary to discourage these simultaneous and

> repetitive filings, because they needlessly augment the number of proceedings entertained by the court. This increased administrative burden, in turn, can severely delay adjudication of cases where claimants are truly in need of obtaining relief from the federal courts . . . Any rule which sanctions simultaneous or repetitive suits places the administration of this court's caseload at the mercy of the procedural posturing of plaintiffs' attorneys. Without the knowledge or the ability to control when a case before it might suddenly disappear in favor of a parallel state court proceeding, the Court could be adversely affected in the effective administration of its day to day business . . .

DeVona, *supra*.

Thus, there is no merit to Respondents' contention that they should be permitted to litigate parallel actions to conclusion. That Respondents could conclude to the contrary cries out for intervention by this Court to clarify the law in this regard.

Respectfully submitted,

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